

**Hogan
Lovells**

Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
T +1 212 918 3000
F +1 212 918 3100
www.hoganlovells.com

March 18, 2019

BY ECF

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Richard Gaffey, 18 Cr. 693 (RMB)

Dear Judge Berman:

We represent defendant Richard Gaffey in the above-referenced matter. As the Court directed at the conclusion of the status conference on March 12, 2019, we are respectfully submitting this request that the Court restore the original bail conditions that were imposed on Mr. Gaffey following his initial appearance in the Southern District of New York. As the Court also directed, we have conferred with the government, which has informed counsel that it consents to this request.

As the Court is aware, when Mr. Gaffey was first presented in this District on December 17, 2018, Magistrate Judge Debra Freeman released Mr. Gaffey on his own recognizance and on the conditions that his travel be limited to the continental United States; that he surrender all travel documents and not apply for any new ones; that he not possess any firearms, destructive devices or other weapons; that he maintain his current residence and not move without prior permission; and that he be subject to pretrial supervision as directed by Pretrial Services, along with the standard conditions of pretrial release. (A copy of the Order Setting Conditions of Release for Mr. Gaffey, dated December 17, 2018, is attached to this letter.)

Subsequently, this Court modified Mr. Gaffey's bail conditions in order to permit him to travel internationally. Specifically, the Court authorized Mr. Gaffey to travel to Mexico on the condition that he execute a personal recognizance bond in the amount of \$680,000, which was secured by his and his wife's primary residence and vacation home. Pursuant to the Court's order, Mr. Gaffey and his wife executed a bond that was secured by the two pieces of real estate, and his passport was returned to allow him to travel to Mexico with his wife. Also pursuant to the Court's order, following his trip, Mr. Gaffey's passport was promptly returned to Pretrial Services.

As counsel explained during the status conference on March 12, given that Mr. Gaffey does not have any further plans to travel internationally, we respectfully request that the Court re-impose the bail conditions that were originally set by Judge Freeman. This will require that Mr. Gaffey's

The Hon. Richard M. Berman

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conditions of release be modified to their original terms and that the two pieces of real estate will no longer serve as security for any aspect of Mr. Gaffey's bail.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Buehler", is written over a light blue horizontal line.

Robert B. Buehler

Partner
robert.buehler@hoganlovells.com
D: 212-918-3261

Exhibit 1

ORIGINAL
Page 1 of Pages

AO 199A (Rev. 12/11) Order Setting Conditions of Release

UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America

v.

RICHARD GAFFEY

Defendant

)
)
)
)
)

18 CR 693
(RMB)

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. § 14135a.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear at: _____

Place

on _____

Date and Time

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- Person or organization**

Address (only if above is an organization)

City and state

Tel. No.

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed:

Custodian

Date _____

- ☒ (7) The defendant must:

- (X) (a) submit to supervision by and report for supervision to the **PRETRIAL SUPERVISION AS DIRECTED BY PTS**

telephone number _____, no later than _____

- () (b) continue or actively seek employment.

- (☐) (c) continue or start an education program.

- (☒) (d) surrender any passport to: **PSA (& NO NEW APPLICATIONS)**

- (☒) (e) not obtain a passport or other international travel document.

- (☒) (f) abide by the following restrictions on personal association, residence, or travel: CONTINENTAL U.S.

- () (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including:

- (☐) (h) get medical or psychiatric treatment:

- (☐) (i) return to custody each _____ at _____ o'clock after being released at _____ o'clock for employment, schooling, or the following purposes: _____

- (☐) (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.

- (X) (k) not possess a firearm, destructive device, or other weapon.

- (☐) (1) not use alcohol (☐) at all (☐) excessively.

- () (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

- () (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.

- () (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.

- () (p) participate in one of the following location restriction programs and comply with its requirements as directed.

- (☐) (i) Curfew. You are restricted to your residence every day (☐) from _____ to _____, or (☐) as directed by the pretrial services office or supervising officer; or

- ☐ (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or

- ☐ (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court.

- () (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.

- ☐ You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.

- (☐) (r) report as soon as possible, to the pretrial services office or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.

ADDITIONAL CONDITIONS OF RELEASE

- (☒) (s) **AGREED CONDITIONS OF RELEASE: TRAVEL LIMITED TO CONTINENTAL U.S.; SURRENDER TRAVEL DOCUMENTS (& NO NEW APPLICATIONS); DEFT NOT TO POSSESS FIREARM/DESTRUCTIVE DEVICE/OTHER WEAPON; DEFT TO BE DETAINED UNTIL ALL CONDITIONS ARE MET (NO BOND); DEFT MAINTAIN CURRENT RESIDENCE AND NOT MOVE W/OUT PRIOR PERMISSION ; DEFT TO REPORT AS DIRECTED TO SDNY FOR COURT PROCEEDINGS; (AS THE COURT WOULD ANTICIPATE THAT SUPERVISION WOULD BE BY TELEPHONE OR INTERNET, IT ANTICIPATES THAT SUPERVISION CAN BE HANDLED BY THE SDNY, IF PTS DETERMINES A HIGHER LEVEL OF SUPERVISION WOULD BE WARRANTED, IT CAN SEEK TO HAVE DEFT SUPERVISED INSTEAD BY D. MASS**
-

ADVICE OF PENALTIES AND SANCTIONSTO THE DEFENDANT: **RICHARD GAFFEY** 18 CR 693 (RMB0 12/17/2018**YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:**

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years

and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.


RICHARD GAFFEY_____
City and State**Directions to the United States Marshal**

- (☐) The defendant is ORDERED released after processing
- (☐) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: **DECEMBER 17, 2018**_____
Judicial Officer's Signature

AUSA SARAH PAUL

35mm

DOCKET No. 18 CR 693 (RMB)

DEFENDANT

Richard Gaffey

AUSA

Sarah Paul

DEF.'S COUNSEL

Bill Lovett☐ INTERPRETER NEEDED☒ RETAINED ☐ FEDERAL DEFENDERS ☐ CJA ☐ PRESENTMENT ONLY☐ DEFENDANT WAIVES PRETRIAL REPORTwas arrested 12/4/18 = 6:30 am in Mass.☐ Rule 5 ☒ Rule 9 ☐ Rule 5(c)(3) ☐ Detention Hrg.

DATE OF ARREST

☐ VOL. SURR. ordered

TIME OF ARREST

☐ ON WRIT to appear☐ Other: _____TIME OF PRESENTMENT 1:15 pmhere today
by Chris
Morris**BAIL DISPOSITION**☐ SEE SEP. ORDER☐ SEE TRANSCRIPT☐ DETENTION ON CONSENT W/O PREJUDICE☐ DETENTION: RISK OF FLIGHT/DANGER☐ DETENTION HEARING SCHEDULED FOR: _____☒ AGREED CONDITIONS OF RELEASE☐ DEF. RELEASED ON OWN RECOGNIZANCE☒ \$ _____ PRB ☐ FRP☐ SECURED BY \$ _____ CASH/PROPERTY: _____☒ TRAVEL RESTRICTED TO SDNY / continental US☐ TEMPORARY ADDITIONAL TRAVEL UPON CONSENT OF AUSA & APPROVAL OF PRETRIAL SERVICES☒ SURRENDER TRAVEL DOCUMENTS (& NO NEW APPLICATIONS)☒ PRETRIAL SUPERVISION: ☐ REGULAR ☐ STRICT ☒ AS DIRECTED BY PRETRIAL SERVICES☐ DRUG TESTING/TREATMT AS DIRECTED BY PTS ☐ MENTAL HEALTH EVAL/TREATMT AS DIRECTED BY PTS☐ DEF. TO SUBMIT TO URINALYSIS; IF POSITIVE, ADD CONDITION OF DRUG TESTING/TREATMENT☐ HOME INCARCERATION ☐ HOME DETENTION ☐ CURFEW ☐ ELECTRONIC MONITORING ☐ GPS
☐ DEF. TO PAY ALL OF PART OF COST OF LOCATION MONITORING, AS DETERMINED BY PRETRIAL SERVICES☐ DEF. TO CONTINUE OR SEEK EMPLOYMENT [OR] ☐ DEF. TO CONTINUE OR START EDUCATION PROGRAM☒ DEF. NOT TO POSSESS FIREARM/DESTRUCTIVE DEVICE/OTHER WEAPON☒ DEF. TO BE DETAINED UNTIL ALL CONDITIONS ARE MET (no bond needed)☐ DEF. TO BE RELEASED ON OWN SIGNATURE, PLUS THE FOLLOWING CONDITIONS: _____

; REMAINING CONDITIONS TO BE MET BY: _____

ADDITIONAL CONDITIONS/ADDITIONAL PROCEEDINGS/COMMENTS:1) maintain current residence + not move w/o min PTS permission2) to report as directed to SDNY for court proceedings(as the court would anticipate that supervision would be by telephone or indirect, it anticipates that supervision can be handled by the SDNY. If PTS determine that a high level of supervision it can seek to have supervised, instead, by D. Mass.)☐ DEF. ARRAIGNED; PLEADS NOT GUILTY☒ CONFERENCE BEFORE D.J. ON 2:15 pm☐ DEF. WAIVES INDICTMENT12/17/18☐ SPEEDY TRIAL TIME EXCLUDED UNDER 18 U.S.C. § 3161(h)(7) UNTIL _____**For Rule 5(c)(3) Cases:**☐ IDENTITY HEARING WAIVED☐ DEFENDANT TO BE REMOVED☐ PRELIMINARY HEARING IN SDNY WAIVED☐ CONTROL DATE FOR REMOVAL: _____

PRELIMINARY HEARING DATE: _____

☐ ON DEFENDANT'S CONSENTDATE: 12/17/18**UNITED STATES MAGISTRATE JUDGE, S.D.N.Y.**